

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Guardianship of M.P., a Minor.

T.H.,

Petitioner and Respondent,

v.

M.P.,

Objector and Appellant.

E069435

(Super.Ct.No. MCP1601165)

OPINION

APPEAL from the Superior Court of Riverside County. Mark Ashton Cope,
Judge. Affirmed.

M.P., in pro. per., for Objector and Appellant.

Law Office of Sharon L. Tate and Danielle Rivera for Petitioner and Respondent.

I. INTRODUCTION

Minor, M.P., suffers from cerebral palsy, asthma, and a seizure disorder. M.P.'s mother, A.H. (mother), died in August 2016. After mother's death, M.P.'s maternal

grandmother, petitioner and respondent, T.H. (grandmother), petitioned the probate court for appointment as M.P.'s guardian. The court granted grandmother's guardianship petition over the objection of M.P.'s father, objector and appellant, Mi.P. (father). Father contends that the court erred in determining grandmother was a de facto parent, and that the court should have obtained a report and recommendation on the guardianship petition from the regional center. He also argues that the probate court erroneously failed to communicate with the court in Kern County, where the parents had a family law case, about the proper venue. Lastly, he contends that the court erred in failing to consider two of his filings as evidence at the guardianship hearing. We affirm.

II. BACKGROUND

A. *Grandmother's Guardianship Petition and Father's Objection*

In December 2016, grandmother filed a petition to be appointed guardian of M.P., then 12 years old. The petition asserted that mother had passed away in August 2016, and grandmother had been caring for M.P. since then. Grandmother alleged that father had never had custody of M.P.; he had supervised visitation for many years and then unsupervised day visits, but he had never had M.P. overnight. She also alleged that he had a history of alcohol and drug abuse and had lost parental rights over other children. Father and mother had a family law case in Kern County Superior Court. The family court had awarded grandmother custody of M.P. for a substantial period, until mother was able to regain custody.

Father filed an objection to the guardianship petition arguing that the guardianship did not serve M.P.'s best interests. According to him, he and mother separated in 2006, and mother filed a petition to dissolve the marriage in 2012. Grandmother had custody of M.P. from November 2005 to August 2006, until the family court granted mother sole legal and physical custody of M.P. Father had supervised visitation until 2014, when he began twice-monthly, unsupervised, eight-hour visits.

Father asserted that he was initially unaware mother had died, and he attempted to contact her several times after her death. When he discovered that she had died through social media, he began searching for M.P. and filed a missing persons report with the police. The police found M.P. with grandmother in Temecula, California. Father argued that grandmother was not a suitable guardian for M.P. in that she had intentionally concealed M.P.'s whereabouts from him. He disputed grandmother's allegations that he abused alcohol and drugs, and that he had lost parental rights over other children.

B. The Temporary Guardianship Proceedings and Discussions Regarding Venue

Grandmother also requested appointment as M.P.'s temporary guardian. At the hearing on this issue, the court expressed concern that the case might belong in a different venue, namely, where the family law case had been filed. Grandmother explained that the family court in Kern County had given her temporary physical custody of M.P. in September 2016, based on her ex parte application. Grandmother had attempted to file a guardianship petition in Kern County, but the court had directed her to file it in Riverside

County, where she and M.P. resided. Father disputed that grandmother was directed to file in Riverside County.

The court appointed grandmother M.P.'s temporary guardian, but set the matter for review in two weeks, so that M.P.'s recently appointed counsel could meet with M.P. and form a position. The court also told grandmother that she would have to show why the case should not transfer to Kern County.

Grandmother filed a brief arguing that the Riverside County venue was in M.P.'s best interests. M.P. had resided with grandmother in Riverside County for the last four months and was attending school in Temecula. Before filing the guardianship petition in Riverside County, grandmother had attempted to file it in Kern County. The court clerk had rejected it for filing. Grandmother submitted a copy of the clerk's correspondence, which stated: "Pursuant to UCCJEA, the minor is residing with proposed guardian outside Kern County. You must file in the county where the minor is residing."¹ (Capitalization omitted.) In addition, after the recent hearing where the Riverside court had appointed grandmother temporary guardian, the Kern court had dismissed grandmother's and father's dueling requests for orders regarding M.P.'s custody. The Kern court found that the parties "already ha[d] orders" from the Riverside court, and neither party objected to the court dismissing the requests for orders. Grandmother submitted a copy of the minute order from this hearing in the Kern court. Between the

¹ "UCCJEA" stands for the Uniform Child Custody Jurisdiction and Enforcement Act. (Fam. Code, §§ 3400-3465.)

convenience of the witnesses and the Kern court's refusal to accept the guardianship petition, grandmother contended that the Riverside court should not transfer the case.

For his part, father filed a brief asserting that Kern County was the proper venue because he resided there, M.P.'s proper residence was there, and the family law case had been filed there.

At the review hearing, M.P.'s counsel advocated for grandmother to remain temporary guardian. Counsel explained that M.P. had "difficulty communicating" because of her disability, but it was clear to counsel that she was happy and comfortable with grandmother, and was not comfortable with father. Counsel was open to stepping up father's visitation with a goal of expanding M.P.'s comfort level with father. Grandmother argued, among other things, that she "did what any reasonable grandmother would do under these, you know, at a time of crisis. She took care of the best interests of the child and brought the child into her home here in Temecula in Riverside County."

The court found "the review satisfied" and left grandmother's temporary guardianship in place. But the court commented: "I haven't heard evidence at this point, but you did what a reasonable grandmother who was taking sides in a custody dispute would do, but not necessarily what a reasonable grandmother would have done, to take the child and not to tell the child's father where the child was for an extended period of time. That's disturbing to me. [¶] But my role here is not to—is not to punish people for doing things that I don't think they ought to do or reward people for doing things that I do think they ought to do. My role is to try to do what's best for a child [¶] . . . [¶]"

. . . I haven't heard the evidence as to why [father] is not able to take care of his child, but I do know, from what I have been provided with, that [grandmother] has been taking care of this child and can. And so she needs to stay where she is."

On the venue issue, the court advised father: "If you can convince the Kern County court that they should have taken it, then that—that issue isn't closed. I will just put it that way. All right?" At a later hearing, the court issued an order to show cause (OSC) why the case should not be transferred to Kern County.

At the hearing scheduled for the OSC (and other issues), the court announced its tentative intention to take the OSC off calendar. It then heard from the parties, and while father's counsel addressed other issues, he did not say anything about taking the OSC off calendar. As the hearing concluded, M.P.'s counsel asked the court to confirm that it was taking the OSC off calendar. The court replied: "Yes. It doesn't look like it's going to be appropriate."

C. Investigators' Reports

The Probate Code requires a court investigator to investigate and report on any proposed guardianship, unless the court waives the investigation. (Prob. Code, § 1513, subd. (a)(1).)² The court may also refer a guardianship petition to the local child welfare agency for investigation and report, "[i]f the proposed ward is or may be described by Section 300 of the Welfare and Institutions Code" (§ 1513, subd. (b).) In this case,

² All further statutory references are to the Probate Code unless otherwise indicated.

in addition to the probate court investigation, the court ordered the Department of Public Social Services (DPSS) to investigate and report.

As relevant here, the court investigator reported that M.P. had cerebral palsy, a cognitive deficit, asthma, and a seizure disorder. She was nonverbal, nonambulatory, and wheelchair bound. She required 24-hour care, including bathing, changing her diaper, managing her medication, and feeding. Grandmother “has had certification a number of years” to care for M.P.’s special needs. Mother ensured that grandmother became certified because she wanted grandmother to care for M.P., in the event that mother could no longer do so. Grandmother had been involved in M.P.’s daily life since birth and was well versed in M.P.’s disability. M.P. was a longtime client of the Kern County Regional Center, but if the court granted the guardianship petition, grandmother hoped to transfer her to the Inland Regional Center.³ Grandmother reported that the Kern County Department of Public Health Services and clinical nurses from the Kern County Regional Center had inspected her home and found it to be safe and suitable for M.P.

M.P. received social security benefits and a home health aide benefit through Kern County, but even without these resources, grandmother’s income was sufficient to

³ Regional centers are part of the state’s system for caring for the developmentally disabled. The California Department of Developmental Services “has jurisdiction over the laws relating to the care, custody, and treatment of developmentally disabled persons.” (*Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 306.) The department “selects nonprofit corporations known as ‘regional centers’ to determine what services should be provided to the developmentally disabled. The regional centers in turn contract with various agencies or individuals to provide those services.” (*Ibid.*)

support herself and M.P. (Grandmother's income consisted of a retirement pension and a monthly community property settlement from her ex-husband.) M.P. communicated through gestures, body language, and sounds. She seemed happy and content in grandmother's care, and the court investigator observed grandmother to be loving, nurturing, and respectful with M.P. M.P. was in general good health, despite her disability, and was attending a special day class at a middle school in Temecula. School records indicated that M.P. had satisfactory attendance, and grandmother was actively involved in M.P.'s education. The court investigator concluded that grandmother's home was safe and suitable for M.P., and grandmother was a suitable guardian.

Between the court investigator and DPSS, Grandmother reported that the parents had a history of domestic violence, and M.P. was exposed to it before they separated. She also reported that father was a "bully," and "[h]e just wants everything to go his way or [he] gets mad." She expressed concern that father could not meet M.P.'s challenging, special needs. The family court in Kern County had granted grandmother temporary custody, with three visits a month for father. M.P. reacted negatively to father during visits; when she saw him, she thrashed in her chair, shook her head "no," cried, and made "screaming noises." Father had not been in M.P.'s life consistently. The DPSS social worker asked M.P. if she was happy living with grandmother, and she replied by nodding her head up and down and smiling. The social worker asked if M.P. was happy visiting with father. M.P. grimaced and shook her head from side to side.

During a follow-up visit, M.P. communicated with the social worker using an “Eye Gaze Assistive Communication Technology Device.” Through this speech-generating device, M.P. immediately said, “Dad no way,” to the social worker. When the social worker asked how things were with grandmother, M.P. said, “Good, yes, yes.” The social worker then asked how visits were with father, and M.P. replied, “No, no way.” She also communicated, “Dad, no way, sad.”

The social worker attempted to schedule a home assessment with father, but he felt it was unnecessary because he was staying with his brother and planned to purchase his own home soon. The social worker interviewed him by phone. He reported that he had three other biological children, who lived with their mother. He had an auto detailing business and worked “all of the time,” unless he was visiting M.P. or going to court. He denied any history of domestic violence. The last time M.P. was in father’s care was 2005. But he said that he had spent the night at mother’s house since then, so that he could get better acquainted with M.P.’s care. Father expressed concern that grandmother was manipulating M.P. and turning her against him.

The social worker’s investigation revealed that father had a significant history of referrals to county welfare agencies. Between 2000 and 2016, father had 12 referrals out of different counties (either Kern, Los Angeles, or Orange). Of these 12 referrals, five were substantiated, four were unfounded, and three were inconclusive. Many of the referrals involved father’s other children; those involving M.P. were among the unfounded referrals. The substantiated referrals alleged that father had generally

neglected the children, had physically and emotionally abused them, or had exposed them to domestic violence between him and his partner. Grandmother had one unfounded referral in December 2016 alleging general neglect of M.P.

The social worker interviewed D.G., another woman with whom father had a child. D.G. and father were in a relationship from 2002 to 2004. She reported that, in 2013, a court terminated father's parental rights over the daughter they shared. At the time, father had not contacted her daughter in about eight years, and he did not pay child support. D.G. indicated that father was physically and emotionally abusive during their two years together, he used drugs, and he was an alcoholic.

DPSS recommended that the court grant grandmother's guardianship petition. The social worker concluded that father had not been an integral part of M.P.'s life since she was very young. In addition, she expressed concern that father was "not entirely forthcoming" about his reported history of domestic violence and child welfare investigations.

D. Hearing on the Guardianship Petition

Father's counsel withdrew three months before the contested guardianship hearing, so father represented himself at the hearing, which took place in October 2017. Two days before the hearing, father filed a declaration with exhibits and a "response to report and recommendation [*sic*] of DPSS." (Capitalization omitted.) The court started the hearing by briefly explaining the trial process. It noted that the rules of evidence apply, except that it could consider the reports of the court investigator and DPSS under

section 1513. Other than those reports, there was no evidence before it; it could not consider the allegations of the petition, “things like declarations,” or other documents that had been filed. Still, the court explained that the parties could present evidence through witness testimony. It also briefly addressed one of father’s legal arguments in his response to the DPSS report. Father argued that section 1461.4 required the regional center to submit a report and recommendation on the guardianship petition, in addition to the reports by the court investigator and DPSS. The court determined that section 1461.4 required a regional center report only “where the proposed guardian is a professional provider of services” to the developmentally disabled, and because grandmother was not a professional provider, the requirement did not apply here. The court also observed: “I wouldn’t have objected, if it had been referred earlier on. It would have been interesting and helpful information, but it’s not needed for us to go forward.”

Grandmother testified that she began caring for M.P. full time when mother died in August 2016. The day after mother’s death, father sent a text message to mother’s cell phone. Grandmother responded to the text message as if she were mother and told him she had gone to grandmother’s house in Temecula. Grandmother did this because she “wasn’t ready to talk to [father] yet.”

When grandmother had custody of M.P. for a year in 2005, she took M.P. to all medical appointments, and she continued to attend all of M.P.’s appointments with mother until her move to Temecula in 2015. Mother wanted grandmother to have custody of M.P., if anything ever happened to mother. Grandmother had a home health

aide certificate, cardiopulmonary resuscitation training, and first aid training. She was retired and could provide 24-hour care for M.P. M.P.'s daily routine required grandmother to wake her up and give her medication; feed her through a feeding tube; bathe her, change her diaper, dress her, style her hair, and brush her teeth; transfer her to a wheelchair and get her to the school bus; read from her communication book about what she did at school and talk to her through the eye gaze communication device; and read to her or do other activities together.

Grandmother noticed changes in M.P.'s behavior when she had visits with father. She cried before visits, resisted getting ready for them and getting in the car, and became visibly upset when they arrived at visits. Father was not involved in M.P.'s life from 2006 to 2013. Since then, he had not provided overnight care for M.P. by himself. Grandmother thought that father would be unable to care for M.P. because he did not grasp how much care she needed. For the last year before the guardianship hearing, he had cancelled some visits and ended them early. He was entitled to visits on the first, third, and fifth Saturdays of the month, but early on he was visiting her only once a month. Grandmother said that she was scared of father and M.P. may have been sensing her feelings, even though she tried not to say anything to M.P. about the visits. If the court granted the guardianship, she was "[a]bsolutely" willing to follow through with visitation, as ordered by the court.

Father testified that he could provide M.P.'s daily care "and then some." He was M.P.'s main caretaker for the first year or so of her life. Father said that mother suffered

from postpartum depression and wanted to put M.P. up for adoption; father refused. They separated and he moved out of state. He started functioning correctly “without them being around.” When he did not have all three of his ex-partners and their court cases in his life, he was able to concentrate on his work, and he had been “good” ever since. Father disputed the substantiated child welfare referrals of general neglect and emotional and physical abuse from 2002 and 2003. But he acknowledged that he had his parental rights over one of his children terminated for failure to pay child support and “not being able to find her within one year.”

During father’s and M.P.’s Saturday visits, he had bathed M.P., fed her, and changed her diaper. In addition to visits, they had FaceTime calls three times a week. They used grandmother’s cell phone for the FaceTime calls. Father said he had given M.P. an iPad, and she was “constantly” calling him from it until grandmother blocked her from doing so. Grandmother said that she blocked M.P. from calling both father and her because M.P. was calling them both “relentless[ly]” and “thought it was funny.” She was willing to unblock father’s number and let him decide in the future whether to take the calls.

Father testified that he had to file a police report to find M.P. after mother’s death. The police found her with grandmother, but she did not return his phone calls or text messages, and so he was not able to see M.P. for three and a half months after mother’s death.

Father's brother testified that father had never been violent or neglectful with his children. Father owned his own business and did very well. He used to own his home but sold it to pay for his lawyer in this case. His brother had seen him care for M.P. during their visits. His brother thought that she appeared happy during the four or five visits he observed.

E. The Court's Ruling

The court granted grandmother's guardianship petition and liberalized father's visitation schedule to the first, third, and fifth weekends of every month, from Friday night to Sunday night. The court found that grandmother's appointment as guardian was necessary and convenient. The court also found, by a preponderance of the evidence, that M.P. was in a stable placement with a de facto parent (grandmother), and had been so for a substantial period of time. The court commented that grandmother had made mistakes. She had been "less than cooperative with visitation" and "less than cooperative when she originally took" M.P. after mother's death without consulting father. Furthermore, grandmother was "resistant to restoring" M.P. to father. The court explained: "And I don't think that was right. I think that was—between fair and foul, that was foul." Nevertheless, grandmother's mistakes did not "overcome . . . the harm that would be done by removing" M.P. from grandmother's care. The court also observed: "The repeated argument that I've heard over and over again about how [M.P.] reacts poorly to visitation, that's—that's open to interpretation. It depends on how you see it. . . . [¶] It's also subject to influence. And so, if [M.P.] sees that [grandmother], who she loves and

who supports her, has negative feelings about these visitations, well, [M.P.] is going to have negative feeling about the visitations. And frankly, if it doesn't . . . improve, then we'll have to consider whether, on balance, it's more harmful than helpful to have this guardianship, but that's not for today." The court emphasized that it expected grandmother to comply with the visitation order, and referencing the iPad issue, it ordered both parties not to interfere with each other's communication with M.P.

Before adjourning, father told the court that he would "like this court case to stay in Riverside at this court." He believed grandmother had a residence in Lancaster also, and he wanted "to make sure it was going to stay here."

III. DISCUSSION

A. *Grandmother's De Facto Parent Status*

Father contends that the court erred in declaring grandmother a de facto parent because she "illegal[ly] abducted" M.P. "under despicable circumstances." As we shall explain, the de facto parent finding was significant in that it gave rise to a rebuttable presumption favoring grandmother. We disagree with father's contention and discern no error.

The probate court may appoint a guardian of the person "if it appears necessary or convenient." (Prob. Code, § 1514, subd. (a).) The court's decision is governed by the provisions of the Family Code relating to custody of minors. (Prob. Code, § 1514, subd. (b)(1); *Guardianship of Vaughan* (2012) 207 Cal.App.4th 1055, 1069 (*Vaughan*).) Before appointing a nonparent guardian over the objection of a parent, the court must

find, by clear and convincing evidence, that (1) “granting custody to a parent would be detrimental to the child,” and (2) “granting custody to the nonparent is required to serve the best interest of the child.” (Fam. Code, § 3041, subds. (a), (b); *Vaughan, supra*, at p. 1070.)

“A finding of detriment does not require any finding of unfitness of the parents.” (Fam. Code, § 3041, subd. (c).) Instead, detriment may include “the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of his or her parent, fulfilling both the child’s physical needs and the child’s psychological needs for care and affection, and who has assumed that role for a substantial period of time.” (*Ibid.*; *Vaughan, supra*, 207 Cal.App.4th at p. 1070.) A person who has assumed the role of a parent, on a day-to-day basis, is referred to as a de facto parent. (*Vaughan, supra*, at p. 1070.)

When the court finds, by a preponderance of the evidence, that a guardianship petitioner has attained de facto parent status, this finding “creates a rebuttable presumption that it would be detrimental to place the child in the custody of a parent and the best interest of the child requires nonparental custody.” (*Vaughan, supra*, 207 Cal.App.4th at p. 1070; see also Fam. Code, § 3041, subd. (d).) The parent may rebut this showing with a preponderance of the evidence to the contrary. (Fam. Code, § 3041, subd. (d).) This rebuttable presumption “reflects a legislative assessment that “continuity and stability in a child’s life most certainly count for something” and ‘in the absence of proof to the contrary, removing a child from what has been a stable,

continuous, and successful placement is detrimental to the child.” (H.S. v. N.S. (2009) 173 Cal.App.4th 1131, 1138.)

We review the probate court’s custody determinations for abuse of discretion. (Vaughan, *supra*, 207 Cal.App.4th at p. 1067.) ““Only in an exceptional case, in which the record so strongly supported a party’s claim to custody that a denial of that claim by the trial court would constitute an abuse of discretion may an appellate court itself decide who should be granted custody” (Ibid.) We review the court’s underlying factual findings for substantial evidence. (Ibid.)

In this case, the court’s finding that grandmother was a de facto parent was not an abuse of discretion. The evidence showed that grandmother had assumed the role of M.P.’s parent, on a day-to-day basis, for a substantial period of time. For approximately 14 months leading up to the guardianship hearing, grandmother had fulfilled M.P.’s physical and psychological needs. Grandmother fed her, bathed her, changed her diapers, dressed her, gave her medication, read to her, talked with her about school, and did other activities with her. Grandmother was loving, nurturing, and respectful with M.P.

Father focuses on the court’s criticisms of grandmother’s behavior to support his argument that grandmother was “not a suitable de facto parent.” It is true that the court commented critically on grandmother’s behavior several times. At the temporary guardianship hearing, it said that it was disturbed by her decision to take M.P. after mother’s death without consulting father, and her actions were not necessarily those of a reasonable grandmother. At the guardianship hearing, it commented that grandmother

had been less than cooperative with visitation, and less than cooperative when she took M.P. after mother's death. As "between fair and foul," the court described that latter action as foul.

But a finding of de facto parenthood "is not based on . . . the manner in which the de facto parent gained custody. Rather, it is based on the quality of the relationship between the child and the de facto parent." (*Vaughan, supra*, 207 Cal.App.4th at p. 1072.) Accordingly, grandmother's actions toward father had no bearing on whether she had come to function as a parent to M.P. That is not to say her behavior was irrelevant. The court could certainly consider her behavior in determining whether father had rebutted the presumption that giving grandmother custody was in M.P.'s best interest. And, it is clear from the record that the court did so. The court's comments reveal a concern that grandmother had interfered with or negatively influenced father's relationship with M.P. Still, the court found that the harm M.P. would suffer from disrupting her stable placement outweighed grandmother's "mistakes." In other words, the court concluded that father had not rebutted the presumption arising from grandmother's de facto parent status. We cannot say that this was an abuse of discretion, particularly where the court significantly increased father's visitation, warned grandmother against negatively influencing M.P.'s feelings on visitation, and ordered her not to interfere with M.P.'s and father's communication. This is not one of those exceptional cases in which we should overrule the probate court's custody determination. (*Id.* at p. 1067.)

B. The Failure to Obtain a Regional Center Report

Father contends that the court was required to refer this case to the regional center for report and recommendation, and the court erred in determining otherwise. We assume for the sake of argument that the court erred, but we nevertheless hold the error was not prejudicial.

At least 30 days before a guardianship hearing, the petitioner must deliver notice of the hearing and a copy of the petition to the director of the regional center, when all of the following conditions exist: (1) “[t]he proposed ward . . . has developmental disabilities”; (2) “[t]he proposed guardian . . . is not the natural parent of the proposed ward”; (3) “[t]he proposed guardian . . . is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider”; and (4) “[t]he proposed guardian . . . is not a public entity.” (§ 1461.4, subd. (a)(1)-(4).) The existence of these four conditions also requires the regional center to “file a written report and recommendation with the court regarding the suitability” of the guardianship petitioner “to meet the needs of the proposed ward.” (§ 1461.4, subd. (b).)

M.P. has a developmental disability, according to the statutory definition of this term. (§ 1420 [defining developmental disability to include cerebral palsy].) Moreover, grandmother is not the natural parent of M.P., nor is grandmother a public entity. (§ 1461.4, subd. (a)(2), (4).) But the court determined that there was no need for the regional center report and recommendation because the remaining condition did not exist.

Specifically, grandmother was not “a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities” (§ 1461.4, subd. (a)(3).) The court interpreted this section to apply only to “*professional* provider[s] of services.” (Italics added.)

Nothing in the statute clearly limits the definition of provider in this manner, and the court did not point to any case law that supports its interpretation. On appeal, grandmother offers no authorities to support this interpretation, and our independent research has disclosed no case law interpreting this code section. (§ 1461.4.) But even assuming grandmother qualified as a “provider of board and care . . . to persons with developmental disabilities” (§ 1461.4, subd. (a)(3)), and the court therefore erred in rejecting the need for a regional center report, we conclude that the presumed error was not prejudicial.

Father has not shown a reasonable probability that he would have obtained a more favorable result in the absence of the error. (*Diaz v. Carcamo* (2011) 51 Cal.4th 1148, 1161.) As we have discussed, the court based its order granting the guardianship petition on grandmother’s de facto parent status and the rebuttable presumption created by that status. (Fam. Code, § 3041, subd. (d); *Vaughan, supra*, 207 Cal.App.4th at p. 1070.) And the court based grandmother’s de facto parent status on the evidence that she had assumed the role of M.P.’s parent on a day-to-day basis and for a substantial period of time. (Fam. Code, § 3041, subd. (c).) There is no indication that the regional center would have any information to dispute grandmother’s daily parenting role for the last 14

months. We therefore see no reasonable possibility that a report from the regional center would have changed the de facto parent finding or the resulting presumption in favor of grandmother.

Father contends that he was prejudiced because the investigators who reported to the court were not qualified to speak with a child with severe verbal disabilities, as the regional center was qualified to do, and the investigators failed to report on M.P.'s disability needs. First, father's assertion that the probate court investigator and the social worker were unqualified is speculation. If father had doubts about the investigators' qualifications or ability to communicate with M.P., he was entitled to call them as witnesses and question them on these issues. (Prob. Code, § 1513, subd. (c).) He did not. Moreover, with respect to the court investigator in particular, the court was required to appoint someone who had the training or experience "to communicate with, assess, and deal with persons who are or may be the subject of proceedings under" the Guardianship-Conservatorship Law (Prob. Code, §§ 1400-2893). (Prob. Code, § 1454, subd. (b)(1); see also Prob. Code, § 1400.) We presume that the court fulfilled this official duty. (Evid. Code, § 664; *In re I.V.* (2017) 11 Cal.App.5th 249, 258.)

Second, the investigators did not fail to report on M.P.'s disability needs. Indeed, the Probate Code required the court investigator to include in the report, "to the extent feasible, an assessment of any identified developmental, emotional, psychological, or educational needs of the proposed ward and the capability of the petitioner to meet those needs." (§ 1513, subd. (a)(2).) Both the court investigator and the social worker had

access to M.P.’s “school records, . . . public and private social services records,” and “an oral or written summary” of her medical and psychological records. (§ 1513, subd. (e).) The section of the court investigator’s report on M.P.’s developmental needs stated that she had severe cerebral palsy and a cognitive deficit; described her as nonambulatory and nonverbal, but nevertheless able to communicate through gestures, body language, and sounds; and described the type of 24-hour care that she needed. Elsewhere, the report noted that the Kern County Department of Public Health Services and the Kern County Regional Center had found grandmother’s home safe and suitable for M.P. The reports of both investigators showed that M.P. was healthy and happy in grandmother’s care. Given the reports that the court already had before it, and the improbability that a regional center report would have changed the court’s de facto parent finding, we find no prejudice in failing to obtain such a report.

C. Venue

Father argues that the probate court erred in failing to communicate with the Kern County court about the proper venue for this case. In addition, he suggests that the court should not have relied on the Kern County clerk’s rejection of the guardianship petition to decide venue. We reject both of these arguments.

Generally, the proper venue for the filing of a guardianship petition is the county in which the proposed ward resides, or “[s]uch other county as may be in the best interests of the proposed ward” (§ 2201, subds. (a), (b).) However, when “a custody or visitation proceeding has already been filed” in a different county, another set

of rules apply. (§ 2204, subd. (a).) “If the guardianship proceeding is filed in a county where the proposed ward and the proposed guardian have resided for less than six consecutive months immediately prior to the commencement of the proceeding,” the court should transfer the guardianship case to the court hearing the preexisting custody or visitation proceeding, “*unless* the court determines that the best interests of the minor require that the guardianship proceeding” remain where it was filed. (§ 2204, subd. (a)(2), italics added.)

The court where the petitioner commenced the guardianship proceeding “shall communicate concerning the proceedings with each court where a custody or visitation proceeding is on file prior to making a determination” on venue. (§ 2204, subd. (b)(1).) California Rules of Court, rule 7.1014 governs communications between the guardianship court and the family court concerning venue. For instance, the rule requires the judicial officer in the guardianship court to communicate with the judicial officer in the family court about “which county provides the venue for the guardianship proceeding that is in the best interests” of the proposed ward. (Cal. Rules of Court, rule 7.1014(b).) The courts must make a record of all communications between judicial officers. (Cal Rules of Court, rule 7.1014(b)(3).)

Here, father has forfeited the argument that the probate court erroneously failed to communicate with the family court. Appellate courts ordinarily do not consider a claimed error where the appellant failed to raise the issue in the trial court. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.) ““[I]t is unfair to the trial judge and to the adverse

party to take advantage of an error on appeal when it could easily have been corrected””” in the trial court. (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501, italics omitted.) “Moreover, it would be inappropriate to allow a party not to object to an error of which the party is or should be aware, “thereby permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not.” [Citation.]” (*Ibid.*) While father initially objected to venue in Riverside, he later appeared to abandon that objection, and he never raised the lack of communication between the probate court and the family court. Had he raised the issue in a timely manner, the court could have easily corrected that failure. As a result, he cannot belatedly raise the issue on appeal.

Moreover, contrary to father’s suggestion, it is not at all clear that the probate court relied on the Kern County clerk’s rejection of the guardianship petition to decide venue. The record suggests the opposite. Grandmother submitted the clerk’s rejection correspondence, and then at a *later* hearing, the court set the matter for an OSC regarding transfer of venue, remarking: “To me it’s clearly a Kern County case.” The timing of the OSC indicates that the clerk’s rejection correspondence did not convince the court, and venue was still an open issue.

Ultimately, the court did not explain its rationale for taking the OSC off calendar, and father’s counsel was silent on the matter. We presume the court correctly concluded that M.P.’s best interests required the guardianship proceedings to remain in the court where grandmother filed. (§ 2204, subd. (a)(2); *Jameson v. Desta* (2018) 5 Cal.5th 594,

608-609.) Father has the burden of showing otherwise, but has not done so. (*Jameson v. Desta, supra*, at pp. 608-609.)

D. Father's Declaration and Response to the Investigative Reports

Father lastly contends that the court erred when it failed to consider his declaration and his response to the investigative reports, both filed on the eve of the guardianship hearing. We disagree.

The court tried to explain the trial process for father's benefit at the beginning of the hearing. In particular, the court explained that the Probate Code (§ 1513) permitted it to consider the investigators' reports, but the other documents that the parties had filed were not evidence. The court was simply conveying that it was bound by the Evidence Code, and particularly the hearsay rule, which excludes out-of-court statements offered to prove the true of the matter asserted. (Evid. Code, § 1200.) Father's declaration and response to the investigative reports were replete with hearsay statements, and there was no error in failing to consider them. His vehicle for presenting the statements in his filings was live witness testimony. The court did not restrain him from calling witnesses or presenting exhibits at the hearing.

To the extent father stated legal arguments in his filings, we do not think the court failed to consider them. This is evidenced by the court's discussion of his argument that the regional center report was required. The court committed no error here.

IV. DISPOSITION

The guardianship order is affirmed. Grandmother shall recover costs on appeal.

(Cal. Rules of Court, rule 8.278(a)(1).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

McKINSTER
Acting P. J.

RAPHAEL
J.